UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MAKEFIELD LLC, Plaintiff, v. TOPSON DOWNS OF CALIFORNIA, INC., Defendant.	Civil Action No. **COMPLAINT AND DEMAND FOR JURY TRIAL** ECF Case

Plaintiff Makefield LLC (d/b/a The Arrivals) (hereafter "The Arrivals"), by and through its undersigned counsel, brings this action against the defendant Topson Downs of California, Inc. (d/b/a Arrive Clothing) (hereafter "Arrive Clothing" or "Defendant"). As grounds for this complaint, The Arrivals alleges the following, upon actual knowledge with respect to itself and its own acts, and upon information and belief as to other matters:

Parties

1. Plaintiff The Arrivals is a Delaware limited liability company with its principal place of business at 110 Terry Dr., Suite 100, Newtown, PA 18940, and offices in New York at 13 East 16th Street, #6, New York, NY 10003.

2. Defendant Arrive Clothing is a California corporation with its principal place of business at 3840 Watseka Avenue, Culver City, CA 90232.

Nature of the Complaint

3. This is a civil action for federal unfair competition and false designation of origin in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), and for unfair competition and trademark infringement under the statutory and common law of the State of New York.

Jurisdiction and Venue

4. This Court has jurisdiction pursuant to 15 U.S.C. § 1121(a) and 28 U.S.C. §§ 1331, 1338(a), 1338(b), and 1367(a). This Court also has jurisdiction pursuant to 15 U.S.C. § 1332(a), because the amount in controversy exceeds $75,000, exclusive of interests and costs, and there is diversity of citizenship between the parties.

5. This Court has personal jurisdiction over Arrive Clothing because Arrive Clothing regularly transacts business within the State of New York and contracts to supply goods in the State, and has marketed and sold, and continues to market and sell, clothing and related products under the trade name ARRIVE CLOTHING and trademarks ARRIVE and ARRIVE CLOTHING (the "ARRIVE Marks") in the State of New York, causing tortious injury throughout the State of New York. More generally, Arrive Clothing has sold product via its website using the ARRIVE Marks, and shipped said merchandise to New York residents. Arrive Clothing has advertised, promoted, and solicited business using its infringing ARRIVE Marks via its own website <https://arriveclothing.com> to customers residing in this District. In addition, Arrive Clothing advertises and promotes its business online using the ARRIVE Marks through other web sites, such as Facebook.com, through which New York residents are reached. Moreover, Topson Downs of California, Inc. is registered with the New York Department of State pursuant to New York Business Corporation Law § 1304.

6. Venue is proper in this judicial district under 28 U.S.C. § 1391(b) because Arrive Clothing is a corporation that is subject to personal jurisdiction in this District and a substantial part of the events giving rise to the claim occurred in this District.

Facts

The Arrivals and Its THE ARRIVALS Trademark

7. The Arrivals has been producing and selling apparel since 2014. Specifically, The Arrivals produces and sells apparel and accessories (hereafter referred to as "The Arrivals Goods").

8. At least as early as October 2014, The Arrivals began using the THE ARRIVALS trademark in United States commerce in association with The Arrivals Goods, and has continuously and extensively manufactured, marketed, and sold The Arrivals Goods under the THE ARRIVALS mark since that date.

9. Since at least as early as October 2014, The Arrivals has prominently featured THE ARRIVALS trademark on its products and hangtags, its website and social media accounts, and promotional materials.

10. Since at least as early as October 2014, The Arrivals has invested a significant amount of time, effort, and resources promoting the THE ARRIVALS mark and establishing goodwill in that mark.

11. THE ARRIVALS brand has a strong consumer following throughout North America and internationally.

12. The Arrivals Goods are widely available for purchase online via the e-commerce platform on its website <http://thearrivals.com/>; through social media, including Instagram; and at a brick-and-mortar retail location in New York City. The Arrivals Goods are also marketed through certain third-party sales channels under the THE ARRIVALS mark, including both digital and brick-and-mortar retail outlets.

13. Since October 2014, The Arrivals has received critical acclaim in the fashion

press and in broader media circles for its THE ARRIVALS products, including *The New York Times*, *Vogue*, *goop*, *FASHIONISTA*, *TechCrunch*, *Refinery29*, and *HYPEBEAST*.

14. The THE ARRIVALS trademark has become associated with The Arrivals in the minds of the relevant trade and consumers, and has become an enormously valuable asset to The Arrivals.

15. The Arrivals has invested in securing its intellectual property. For example, The Arrivals owns U.S. Trademark Application Serial No. 86/159,035, filed on January 7, 2014, for the THE ARRIVALS trademark for "Clothing, namely, shirts, tops, jackets, and hats" in International Class 25 and "Online retail store services featuring clothing, hats, and accessories" in International Class 35.

Arrive Clothing and Its Infringing ARRIVE Marks

16. In February 2017, Arrive Clothing began using the ARRIVE Marks in connection with apparel.

17. Since February 2017, Arrive Clothing has been selling, promoting, and advertising its products under the ARRIVE Marks via its website <arriveclothing.com>; as well as its Facebook <www.facebook.com/arriveclothing>; Instagram <www.instagram.com/arriveclothing>; and Twitter <twitter.com/arriveclothing> accounts.

18. Arrive Clothing's use of the ARRIVE Marks in connection with clothing has occurred throughout the United States, and its advertising and promotional activities have been directly targeted at potential customers in New York and this judicial district.

19. In April 2017, The Arrivals first became aware of Arrive Clothing's use of the ARRIVE Marks.

20. In April 2017, The Arrivals contacted Arrive Clothing directly via email,

objecting to Arrive Clothing's use of the ARRIVE Marks and requesting that Arrive Clothing cease using the ARRIVE Marks. Arrive Clothing refused to comply with The Arrivals' request and continued to use the ARRIVE Marks.

21. On April 7, 2017, The Arrivals, via its counsel, contacted Arrive Clothing, again objecting to Arrive Clothing's use of the ARRIVE Marks and requesting that Arrive Clothing cease using the ARRIVE Marks. This time responding through counsel, Arrive Clothing again refused to comply with The Arrivals' request and it continued to use the ARRIVE Marks.

22. Arrive Clothing adopted the ARRIVE Marks to trade upon the well-established goodwill and impeccable business reputation represented by The Arrivals' THE ARRIVALS trademark.

23. Arrive Clothing has used, and continues to use, the ARRIVE Marks on its website, its products, and its advertising and promotional materials. Such commercial activity extends throughout the United States.

24. Arrive Clothing continued, and continues, to use the ARRIVE Marks after The Arrivals objected to its infringing use of the ARRIVE Marks.

COUNT I
Federal Unfair Competition and False Designation of Origin (15 U.S.C. § 1125(a))

25. The Arrivals repeats and realleges paragraphs 1 through 24 of this Complaint, inclusive, as if the same were fully set forth herein.

26. The Arrivals' THE ARRIVALS trademark is inherently distinctive. Moreover, as a result of its extensive use by The Arrivals, THE ARRIVALS trademark has become well known within the fashion and apparel industry and has become an indication of origin solely associated with The Arrivals' goods and services.

27. The Arrivals' THE ARRIVALS trademark is and has been prominently displayed

on its products and hangtags, its website and social media accounts, and its promotional materials.

28. The Arrivals' THE ARRIVALS trademark is associated by the relevant trade and consumers with The Arrivals. Defendant was aware of this source association when it adopted the ARRIVE Marks for its own apparel.

29. The ARRIVE Marks are aurally, visually, and conceptually similar to the THE ARRIVALS trademark. The respective marks are used in connection with apparel marketed to a youthful and design-conscious consumer segment.

30. Defendant has used the ARRIVE Marks in commerce and on and in connection with its apparel. Such use of the ARRIVE Marks by Defendant is likely to cause confusion, to cause mistake, or to deceive consumers and potential customers as to the affiliation, connection, or association of Defendant with The Arrivals, or as to the origin, sponsorship, or approval of Defendant's products.

31. There were, and are, countless alternative marks available to Defendant to use in connection with its products. Accordingly, it was unnecessary for Defendant to adopt and use a trademark that is confusingly similar to The Arrivals' THE ARRIVALS trademark.

32. By using the confusingly similar ARRIVE Marks, Defendant has misappropriated The Arrivals' THE ARRIVALS trademark and the goodwill generated, thereby violating 15 U.S.C. § 1125(a).

33. Defendant's use of the ARRIVE Marks will deceive consumers into believing that its apparel is manufactured by or associated with The Arrivals when it is not, thereby falsely designating the origin of its apparel.

34. The Arrivals and Defendant have advertised and sold their apparel under the THE

ARRIVALS trademark and ARRIVE Marks, respectively, in the same channels of trade, and will continue to advertise and sell in the same channels of trade unless Defendant is enjoined from doing so.

35. The Arrivals has been damaged and has suffered economic harm as a result of Defendant's willful, wrongful, and infringing conduct and is likely to continue to be damaged and to suffer economic harm unless this Court enjoins Defendant's unlawful activities. The Arrivals is without an adequate remedy at law.

COUNT II
New York Statutory and Common Law Trademark Infringement
(N.Y. Gen. Bus. Law § 360-o)

36. The Arrivals repeats and realleges paragraphs 1 through 36 of this Complaint, inclusive, as if the same were fully set forth herein.

37. The Arrivals' ownership and exclusive use in commerce of the THE ARRIVALS trademark predates Defendant's use of the ARRIVE Marks.

38. Defendant uses the ARRIVE Marks in interstate commerce in connection with the sale, advertisement, and promotion of apparel.

39. Defendant's use of the ARRIVE Marks is without The Arrivals' permission or authority and is in total disregard of The Arrivals' rights to control its THE ARRIVALS trademark.

40. Defendant's unauthorized use in commerce of the ARRIVE Marks, as described above, is likely to cause confusion among relevant consumers.

41. Defendant's acts constitute trademark infringement in violation of the law of the State of New York.

42. Defendant is and was at all relevant times both actually and constructively aware

of The Arrivals' prior use and ownership of the THE ARRIVALS trademark, and Defendant's conduct is therefore willful and intentional and intended to confuse the public as to the source of Defendant's products, and to injure The Arrivals and reap the benefit of The Arrivals' goodwill associated with the THE ARRIVALS trademark.

43. As a direct and proximate result of The Arrivals' trademark infringement in violation of the law of the State of New York, The Arrivals has been and will continue to be damaged.

44. Defendant's conduct has caused, is causing, and will continue to cause The Arrivals to suffer irreparable harm, and unless Defendant is restrained, The Arrivals will continue to be so damaged, because it has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, The Arrivals prays that this Court:

(1) Grant each of the claims for relief herein, in favor of The Arrivals and against Defendant;

(2) Issue a preliminary order enjoining and restraining Defendant, its officers, directors, agents, employees, licensees, assigns, servants, affiliates, subsidiaries, and all others acting in active concert or participation with it from:

(a) directly or indirectly manufacturing, distributing, selling, advertising, marketing, and offering for sale apparel in connection with the ARRIVE Marks (in all stylizations) and any confusingly similar mark; and

(b) directly or indirectly using the ARRIVE Marks, and any confusingly similar mark, on the Internet, including, but not limited to, displayed on any website and in any website metatags;

(3) Issue an order that Defendant account for and pay over to The Arrivals all damages (including actual damages, profits, statutory damages, and prejudgment and post-judgment interests), in an amount no less than the sum of:

(a) all profits derived by Defendant from its sale of products sold in connection with the ARRIVE Marks (and any confusingly similar mark) and from all other activities herein complained of, and that such amount be trebled because of the willful and exceptional acts of infringement described herein and in disregard of The Arrivals' known rights;

(b) all actual damages suffered by The Arrivals as a result of Defendant's sale of products sold in connection with the ARRIVE Marks (and any confusingly similar mark) from all other activities complained of above, and that such amount be trebled because of the willful and exceptional acts of trademark infringement, unfair competition, and false designation of origin described herein and in disregard of The Arrivals' known rights;

(c) all profits unjustly or inequitably obtained by Defendant as result of its trademark infringement, unfair competition, and false designation of origin;

(4) Issue an order that Defendant deliver up for destruction all advertisements and promotional materials that depict the ARRIVE Marks (or any confusingly similar mark);

(5) Issue an order that Defendant deliver up for destruction all products displaying the ARRIVE Marks;

(6) Issue an order that Defendant expressly abandon its U.S. Trademark Application for the mark ARRIVE (Serial No. 87/412,743);

(7) Issue an order that Defendant expressly abandon its U.S. Trademark Application for the mark ARRIVÉ (Serial No. 87/144,384);

(8) Issue an order that Defendant expressly abandon its U.S. Trademark Application for the mark ARRIVED (Serial No. 87/144,412);

(9) Declare Defendant's unlawful acts to be exceptional and award enhanced damages on account of the willful and wanton nature of its acts and require that Defendant pay to The Arrivals' the latter's litigation expenses, including reasonable attorneys' fees and costs; and

(10) Award The Arrivals' such other and further relief as the Court deems just and equitable.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff Makefield LLC hereby demands a jury trial of all issues so triable.

Dated: May 5, 2017
New York, New York

Respectfully submitted,

/s/ Joshua I. Schiller

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